

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

M. MITCHEM) OTA Case No. 19044666
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)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

M. Mitchem¹

For Respondent:

Leoangelo C. Cristobal, Tax Counsel

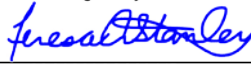
T. STANLEY, Administrative Law Judge: On May 20, 2020, we issued an Opinion sustaining Franchise Tax Board's action denying appellant's claims for refund for taxable years 2010 through 2013. Upon consideration of appellant's petition for rehearing (Petition), we conclude that the grounds set forth therein do not meet the requirements for a rehearing under California Code of Regulations, title 18, section 30604.

A rehearing may be granted where one of the following grounds exist and the rights of the filing party are materially affected: (a) an irregularity in the appeal proceedings which occurred prior to issuance of the written opinion and prevented fair consideration of the appeal; (b) accident or surprise which occurred during the appeal proceedings and prior to the issuance of the written opinion, which ordinary caution could not have prevented; (c) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the written opinion; (d) insufficient evidence to justify the written opinion or the opinion is contrary to law; or (e) an error in law. (Cal. Code Regs., tit. 18, § 30604(a)–(e).)

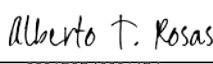
Appellant asserts that a rehearing is warranted because she was incarcerated and therefore unable to participate in the appeal. In support, appellant provides a single page of a court document that appears to assert that she had paid 91 percent of her federal taxes. We first note


¹ Appellant was represented by the Tax Appeals Assistance Program (TAAP) during the pendency of the original appeal. Appellant filed her own petition for rehearing.

that inability to personally participate in an appeal is not in and of itself a ground for a rehearing. To the extent that appellant's lack of personal participation in the appeal may be considered an irregularity in the proceedings, that error must be material to the outcome of the appeal. (*Appeal of Smith*, 2018-OTA-154P.) Here, appellant was represented by TAAP for the entire time the briefing period (including extensions) remained open. During that time appellant did not submit a single document to support her claim that a financial disability tolled the statute of limitations for her claims for refund. Nothing submitted with the Petition is material to the disposition in the Opinion. Furthermore, appellant has provided no evidence to show the dates of her alleged incarceration or how it affected her ability to participate in the briefing process, the subsequent supplemental briefing, the prehearing conference, and the hearing. Accordingly, we find that appellant failed to establish a ground for a rehearing, and the Petition is hereby denied.²

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Albert T. Rosas
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 9/30/2020

² Appellant makes additional arguments about her inability to pay. However, the matter before the Office of Tax Appeals involved claims for refund, so that assertion is also irrelevant to the outcome of the Opinion or this Petition.